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OFFICE OF THE SECRETARY

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July 3, 1997

BY HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, DC 20554

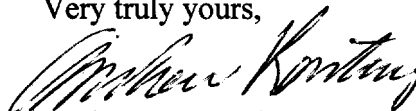
Re: Hailey Local Service Co.
MM Docket No. 97-131; RM-9078
Twin Falls, Idaho

Dear Mr. Caton:

Transmitted herewith on behalf of Hailey Local Service Co. are an original and four copies of its Comments and Counterproposal in the above-captioned proceeding in support of the allotment of Channel 294C to Hailey, Idaho, in lieu of the allotment of Channel 294A to Twin Falls, Idaho, as proposed in the *Notice of Proposed Rule Making*, DA 97-990 (released May 16, 1997).

Should any questions arise concerning this matter, please communicate directly with the undersigned.

Very truly yours,



Andrew S. Kersting
Counsel for
Hailey Local Service Co.

Enclosures
cc (w/ encl.): Certificate of Service

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BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)
)
Amendment of Section 73.202(b),) MM Docket No. 97-131
Table of Allotments,) RM-9078
FM Broadcast Stations)
(Twin Falls, Idaho))

To: Chief, Allocations Branch

COMMENTS AND COUNTERPROPOSAL

Hailey Local Service Co. ("HLSC"), by counsel, hereby submits its comments and counterproposal in response to the Commission's *Notice of Proposed Rule Making*, DA 97-990 (released May 16, 1997) ("*NPRM*"), in the above-captioned proceeding. As set forth below, HLSC respectfully requests that the following change be made to Section 73.202(b) of the Commission's rules in lieu of the change proposed in the *NPRM*:

Channel No.

<u>City</u>	<u>Present</u>	<u>Proposed</u>
Hailey, Idaho	- - -	294C

No change in the existing allotments is requested. In support of this request, the following is stated:

The Commission issued its *NPRM* in response to a proposal by JTL Communications Corporation to amend the FM Table of Allotments by allotting Channel 294A to Twin Falls, Idaho. As noted in the *NPRM*, the proposed allotment can be accomplished in accordance with the Commission's rules without a site restriction, and would provide the community of Twin Falls with

its fourth commercial local FM broadcast service.¹ Nevertheless, HLSC proposes, instead, that the Commission allot Channel 294C to Hailey, Idaho, which would provide the community of Hailey with its first local aural transmission service.

The city of Hailey, Idaho, is an incorporated community with a 1990 U.S. Census population of 3,687.² Hailey is the seat of Blaine County, Idaho, and has its own mayor and city council. The city also has its own police and fire departments, and is home to the Blaine County Sheriff's Department.³

Hailey is served by the following educational facilities: Hailey Elementary School, Wood River Middle School, Wood River High School, and the College of Southern Idaho/Blaine County Center. The community also is served by the Blaine County Historical Museum, the Hailey Public Library, and six parks and recreation facilities.

With respect to medical and dental services, Hailey has its own hospital, a fire and rescue unit, one medical clinic, a medical office with two practicing physicians, and five dental offices. The community also is served by a counseling center and one home health care company.

¹ Stations KEZJ-FM, Channel 239C1, and KLIX-FM, Channel 243C1, currently are licensed to Twin Falls, Idaho. As noted in the *NPRM*, Channel 252C1 recently was allotted to Twin Falls in MM Docket No. 97-28. See *NPRM*, n.1, citing *Report and Order*, DA 97-989 (adopted May 7, 1997). Twin Falls also is the community of license of Stations KEZJ(AM), KLIX(AM), KIFI(AM), and noncommercial Stations KAWZ(FM), KBSW(FM), and KCIR(FM).

² Source: *Rand McNally Commercial Atlas & Marketing Guide*, p. 310 (127th ed.) (1996).

³ Unless otherwise indicated, all of the facts contained herein regarding the community of Hailey have been obtained from the *Hailey Chamber of Commerce Business Guide* (1996) ("*Business Guide*").

The Hailey *Business Guide* lists over 100 businesses which are located in the community, including five financial institutions, three hotels, and 13 restaurants. There also are 12 churches in Hailey.

As demonstrated in the attached engineering exhibit, with a site restriction of 29.87 kilometers southeast of Hailey, there is an area in which a suitable transmitter facility may be located that meets the minimum separation requirements with respect to all known licenses, construction permits, open allotments, pending applications, and pending rulemakings. The specified transmitter reference coordinates will enable the proposed station to provide a coverage contour in excess of the required 70dBu over the entire community of license. *See Engineering Statement, p. 1.*

As stated above, the allotment of Channel 294C will provide Hailey with its first local transmission service, which will promote the objectives of Section 307(b) of the Communications Act of providing a fair, efficient and equitable distribution of broadcast stations among the various states and communities.⁴ In addition, the proposed allotment will promote the third allotment priority established in *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88, 91 (1982), whereas the allotment of Channel 294A at Twin Falls would serve only the fourth allotment priority.⁵ The Commission has repeatedly held that the allotment of a first local service is entitled to a preference over the allotment of a channel to a community which already has one or more local

⁴ 47 U.S.C. §307(b). *See National Broadcasting Co. v. U.S.*, 319 U.S. 190, 217 (1943) (describing a goal of the Communications Act to “secure the maximum benefits of radio to all the people of the United States”); *FCC v. Allentown Broadcasting Co.*, 349 U.S. 358, 359-62 (1955) (describing a goal of Section 307(b) to “secure local means of expression”).

⁵ The criteria for determining the comparative preferability of a proposed FM allotment are (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters. 90 FCC 2d at 91.

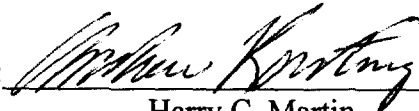
FM stations. *See, e.g., El Rio and Ojai, California*, 6 FCC Rcd 5547, 5548 (Allocations Branch 1991), citing *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d at 91. As noted above, Twin Falls currently is served by five FM stations, and has been allotted an additional channel in MM Docket No. 97-28.⁶ *See* note 1, *supra*.

In the event this counterproposal is granted and the FM Table of Allotments is amended to allot Channel 294C to Hailey, Idaho, HLSC will file an application for a construction permit for the Class C facility, and, upon grant of its application, promptly construct the new station.

WHEREFORE, in light of the foregoing, Hailey Local Service Co. respectfully requests that the Commission GRANT this counterproposal and AMEND the FM Table of Allotments by ALLOTING Channel 294C to Hailey, Idaho.

Respectfully submitted,

HAILEY LOCAL SERVICE CO.

By: 

Harry C. Martin
Andrew S. Kersting

Its Counsel

Fletcher, Heald & Hildreth, P.L.C.
1300 N. Seventeenth Street, 11th Floor
Rosslyn, Virginia 22209
(703) 812-0400

July 3, 1997

c:\...martin\rm\hailey.com

⁶ Noncommercial educational stations such as Stations KAWZ(FM), KBSW(FM), and KCIR(FM), all Twin Falls, are included in the transmission service analysis under Section 307(b). *Valley Broadcasters, Inc.*, 5 FCC Rcd 2785, 2788 (1990).

KLEIN BROADCAST ENGINEERING

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JUNE 1997

ENGINEERING STATEMENT
Comments & Counter Proposal
MM-Docket 97-131
RM-9078

re: Proposed Allocation of FM Channel 294A
at Twin Falls, Idaho

Hailey Local Service Company, has retained the firm of Klein Broadcast Engineering to prepare this Engineering Statement in Support its Comments and Counter Proposal in MM-Docket Number 97-131, RM-9078, regarding the allocation of FM Channel 294A at Twin Falls, Idaho.

Hailey Local Service Co., believes it is in the Public Interest and consistent with Commission policy to allocate FM Channel 294 C, to the community of Hailey, Idaho. This proposal would be a FIRST LOCAL SERVICE to Hailey, Idaho, and a more efficient use of FM Channel 294, proposed herein as a full class "C" allotment, giving the community of Hailey, Idaho its FIRST WIDE AREA service as well, rather than the previously proposed FM Channel 294 A at Twin Falls, Idaho, as that community's FOURTH service.

An engineering analysis reveals that using the "listed city center geographic coordinates" for Hailey, Idaho, of NL:43-31-18 WL:114-18-48, the allocation of FM Channel 294 C can not be made to Hailey, Idaho. (See Engineering Exhibit E-1) However, using a Site Restriction of 29.87 kilometers on a bearing of 154.4 degrees true (SSE) from the listed, Hailey, Idaho geographic coordinates, FM Channel 294 C may be allotted to Hailey, Idaho, in conformance with Section 73.207 of the Commission's Rules, at geographic coordinates NL:43-16-45 WL:114-09-14. (See Engineering Exhibit E-2) Further study reveals the allotment of FM Channel 294 C to Hailey, Idaho, from the site restricted geographic coordinates would provide the community of Hailey, Idaho, with a coverage contour in excess of the required 70 dBu, over the entire community, in conformance with Section 73.315 of the Commission's Rules.

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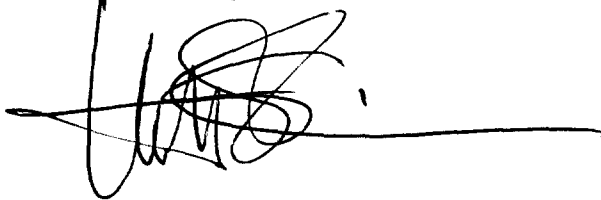
ENGINEERING STATEMENT, cont'd page two: MM-Docket 97-131

Hailey Local Service Company, affirms its intention and is committed to apply for FM Channel 294 C if it is allotted to the community of Hailey, Idaho. Therefore, Hailey Local Service Company, requests the Commission amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to Hailey, Idaho, as follows:

<u>City</u>	<u>Present</u>	<u>Proposed</u>
Hailey, Idaho	(none)	294C

(Site Restricted 29.87 kilometers (18.56 miles) SSE)

Respectfully submitted,



Elliott Kurt Klein, Consulting Broadcast Engineer

29 June 1997

KLEIN BROADCAST ENGINEERING
PARADISE VALLEY, AZ
ENGINEERING EXHIBIT E-1
FM Spacing Study

Page 1
June 29, 1997

Title: HAILEY LOCAL SERVICE CO.(City Center)
Channel 294C (106.7 MHz)
Database: FCC 06/12/97

Latitude: 43-31-18
Longitude: 114-18-48
Safety zone: 135 km

Call City of	Auth License	Licensee name	St FCC File no.	Chan Freq	ERP-kW EAH-m	Latitude Longitude	Br-to -from	Dist. (km)	Req. (km)
PRM Weston	ADD	West Wind Broadcasting	ID DOC-97-38	240A 95.9		42-02-18 111-58-48	130.1 311.7	252.2 223.2	29 CLEAR
ALLOC Idaho Falls		ID		241C 96.1		43-29-51 112-39-50	90.6 271.7	133.4 85.41	48 CLEAR
KID-FM Idaho Falls	LIC	Simmons Family, Inc.	ID BLH-5305	241C 96.1	100 457	43-29-51 112-39-50	90.6 271.7	133.4 85.41	48 CLEAR
KOTB Evanston	CP	Rocky Mountain Radio Net	WY BPH-960828ID	291C3 106.1	.38 464	41-21-11 110-54-28	129.6 311.9	369.5 273.5	96 CLEAR
PRM Homedale	ADD	Homedale Broadcasting Co	ID DOC-97-15	292C 106.3		43-33-13 117-22-10	271.9 89.8	247.0 142.0	105 CLEAR
NEW Island Park Cut-off 05/09/97	APC	Alpine Broadcasting, Ltd	ID BPH-961023MJ	293C 106.5	100 217	44-10-31 111-25-47	71.6 253.6	243.0 1.984	241 CLOSE
ALLOC Island Park Filing window 04/24-05/02/95		ID DOC-89-64	**CLOSED**	293C 106.5		44-23-30 111-18-42	67.0 249.1	259.6 18.60	241 CLEAR
PRM Twin Falls	ADD	JTL Communications Corpo	ID DOC-97-131	294A 106.7		42-33-42 114-28-12	186.9 6.7	107.4 -119	226 SHORT
ALLOC Mccall Filing window 12/15-01/14/88		ID DOC-86-350	**CLOSED**	294A 106.7		44-54-30 116-06-00	317.9 136.7	210.1 -15.9	226 SHORT
ALLOC Brigham City		UT		295C 106.9		41-15-27 112-26-24	147.9 329.2	295.0 54.04	241 CLEAR
KLZX-FM Brigham City	LIC	First National Broadcast	UT BLH-850919KA	295C 106.9	68 722	41-15-27 112-26-24	147.9 329.2	295.0 54.04	241 CLEAR
ALLOC Caldwell		ID		296C 107.1		43-45-18 116-05-52	280.9 99.6	146.3 41.31	105 CLEAR
KCID-FM Caldwell	LIC	AGM Nevada, L.L.C.	ID BLH-961219KB	296C 107.1	49 809	43-45-18 116-05-52	280.9 99.6	146.3 41.31	105 CLEAR
PRM Idaho Falls	ADD	IF Broadcasting of Idaho	ID DOC-97-14	296A 107.1		43-27-21 112-04-03	91.5 273.1	181.8 86.82	95 CLEAR
ALLOC Kemmerer Filing window 12/15-01/19/95		WY DOC-84-231	**CLOSED**	297A 107.3		41-47-36 110-32-18	120.6 303.2	364.2 269.2	95 CLEAR

KLEIN BROADCAST ENGINEERING
PARADISE VALLEY, AZ
ENGINEERING EXHIBIT E-2
FM Spacing Study

Page 1
June 29, 1997

Title: HAILEY LOCAL SERVICE CO. (Site Restricted)
Channel 294C (106.7 MHz)
Database: FCC 06/12/97

Latitude: 43-16-45
Longitude: 114-09-14
Safety zone: 135 km

Call	Auth	Licensee name	Chan	ERP-kw	Latitude	Br-to	Dist.	Req.
City of License		St FCC File no.	Freq EAH-m		Longitude	-from	(km)	(km)
PRM Weston	ADD	West Wind Broadcasting ID DOC-97-38	240A 95.9		42-02-18 111-58-48	127.1 308.6	225.3 196.3	29 CLEAR
ALLOC Idaho Falls		ID	241C 96.1		43-29-51 112-39-50	78.1 259.1	123.1 75.14	48 CLEAR
KID-FM Idaho Falls	LIC	Simmons Family, Inc. ID BLH-5305	241C 96.1	100 457	43-29-51 112-39-50	78.1 259.1	123.1 75.14	48 CLEAR
KOTB Evanston	CP	Rocky Mountain Radio Net WY BPH-960828ID	291C3 106.1	.38 464	41-21-11 110-54-28	127.6 309.8	342.6 246.6	96 CLEAR
PRM Homedale	ADD	Homedale Broadcasting Co ID DOC-97-15	292C 106.3		43-33-13 117-22-10	277.8 95.6	262.2 157.2	105 CLEAR
NEW Island Park Cut-off 05/09/97	APC	Alpine Broadcasting, Ltd ID BPH-961023MJ	293C 106.5	100 217	44-10-31 111-25-47	64.6 246.5	241.0 .0245	241 CLOSE
ALLOC Island Park Filing window 04/24-05/02/95		ID DOC-89-64 **CLOSED**	293C 106.5		44-23-30 111-18-42	60.5 242.5	259.9 18.88	241 CLEAR
PRM Twin Falls	ADD	JTL Communications Corpo ID DOC-97-131	294A 106.7		42-33-42 114-28-12	198.0 17.8	83.78 -142	226 SHORT
ALLOC Mccall Filing window 12/15-01/14/88		ID DOC-86-350 **CLOSED**	294A 106.7		44-54-30 116-06-00	320.0 138.7	238.9 12.87	226 CLOSE
ALLOC Brigham City		UT	295C 106.9		41-15-27 112-26-24	147.3 328.5	265.4 24.37	241 CLEAR
KLZX-FM Brigham City	LIC	First National Broadcast UT BLH-850919KA	295C 106.9	68 722	41-15-27 112-26-24	147.3 328.5	265.4 24.37	241 CLEAR
ALLOC Caldwell		ID	296C 107.1		43-45-18 116-05-52	289.3 108.0	165.8 60.83	105 CLEAR
KCID-FM Caldwell	LIC	AGM Nevada, L.L.C. ID BLH-961219KB	296C 107.1	49 809	43-45-18 116-05-52	289.3 108.0	165.8 60.83	105 CLEAR
PRM Idaho Falls	ADD	IF Broadcasting of Idaho ID DOC-97-14	296A 107.1		43-27-21 112-04-03	82.6 264.1	170.2 75.25	95 CLEAR
ALLOC Kemmerer Filing window 12/15-01/19/95		WY DOC-84-231 **CLOSED**	297A 107.3		41-47-36 110-32-18	117.9 300.4	339.8 244.8	95 CLEAR

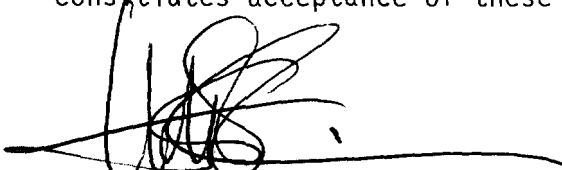
KLEIN BROADCAST ENGINEERING

STATE of ARIZONA)
CITY of SCOTTSDALE)
COUNTY of MARICOPA)

dedicated to improving the science and technology of radio & television communications

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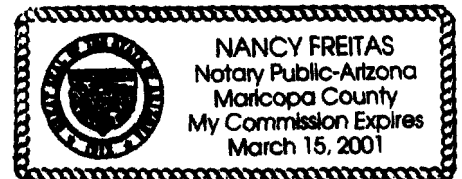
Elliott Kurt Klein, being duly sworn states, that he is a consulting broadcast engineer with offices located at 5529 East Sapphire Lane, Paradise Valley, Arizona 85253. That he has been employed in the broadcast engineering profession since 1967, and that he has prepared many different reports and applications and presented them before the Federal Communications Commission, over the past twenty-eight years. That his engineering qualifications are a matter of record with the Federal Communications Commission. That he has held a valid First Class Radiotelephone Operators License since 1967. That his present license number is PG-11-21248, valid for life. That he is a member in good standing of The Society of Broadcast Engineers since 1969 (SBE). That he is a member in good standing of the Institute of Electrical and Electronic Engineers (IEEE). That the calculations and or measurements and exhibits in the accompanying report, engineering memorandum or application were made by him personally or under his supervision and direction, and that all facts contained herein are true of his own personal knowledge and belief, and on such facts or statements made on belief, they are believed to be true. He assumes no liability for any errors or omissions and shall not be liable for injuries and/or damages (including consequential) which might result from use of said information. All pages, engineering exhibits, and statements are covered under the copyright laws of the United States of America and remain the property of the client and Klein Broadcast Engineering. Any unauthorized use or reproduction is prohibited by law. Use of this engineering report or application constitutes acceptance of these terms by the client.



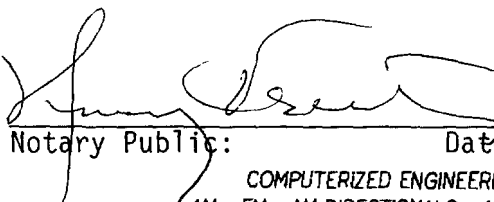
Affiant: Elliott Kurt Klein for the firm:

KLEIN BROADCAST ENGINEERING

Subscribed and sworn to before me,



this 30th day of June 19 97



Notary Public:

Date of Commission Expiration:

COMPUTERIZED ENGINEERING REPORTS/ALLOCATION STUDIES
AM · FM · AM DIRECTIONALS · AUDIO · STL · SATELLITE COMMUNICATIONS
5529 East Sapphire Lane · Scottsdale, Arizona 85253 · 602-991-0575

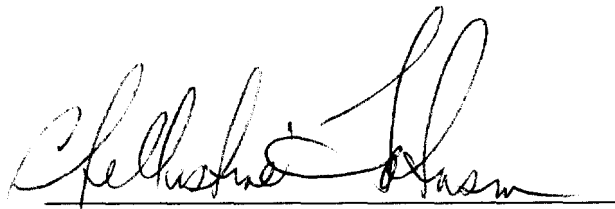
CERTIFICATE OF SERVICE

I, Chellestine Johnson, a secretary in the law firm of Fletcher, Heald & Hildreth, P.L.C., hereby certify that on this 3rd day of July, 1997, copies of the foregoing Comments and Counterproposal were hand delivered or mailed first-class, postage prepaid, to the following:

John A. Karousos, Chief*
Allocations Branch
Policy and Rules Division
Mass Media Bureau
Federal Communications Commission
2000 M Street, N.W., Room 565
Washington, DC 20554

Ms. Kathleen Scheuerle*
Allocations Branch
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Bradley J. Wiskirchen, Esquire
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101 South Capitol Boulevard
P.O. Box 2527
Boise, ID 83701
Counsel for JTL Communications Corporation

A handwritten signature in cursive script, appearing to read "Chellestine Johnson", written over a horizontal line.

Chellestine Johnson

* Hand Delivered